

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13

SPEER HOLDINGS LLC
Plaintiff Below,
Appellee

VS

ANTHONY AMATO
Defendant Below,
Appellant

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C.A. No. JP13-18-005482

TRIAL DE NOVO

Submitted: July 16, 2018
Decided: August 7, 2018

APPEARANCES:

Plaintiff Speer Holdings represented by Kara A. Hager
Defendant Anthony Amato is *Pro Se*

Sean McCormick, Deputy Chief Magistrate
Gerald Ross, Justice of the Peace
Nina Bawa, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

CIVIL ACTION NO: JP13-18-005482

SPEER HOLDINGS VS ANTHONY AMATO

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

Plaintiff filed this civil action seeking past due rent, late fees, and possession through their attorney, Kara Hager, on or about May 11, 2018. The trial before a single Justice of the Peace was held on June 11, 2018. A judgment was awarded to Plaintiff on June 15, 2018, for rent plus per diem for the period of October 1, 2017 through June 13, 2018, late fees, court costs, and post-judgment interest. Plaintiff could not be awarded possession of the rental property because they did not prove Defendant was sent or given the requisite Five Day notice. Plaintiff appealed the decision to a three-judge panel on June 18, 2018. A panel consisting of Deputy Chief Magistrate McCormick, Judge G. Ross, and Judge Bawa heard the trial de novo on July 16, 2018. This is the Court's decision after trial. For the reasons stated below, the Court finds in favor of Plaintiff for all rent due and owing, late fees, per diem for July 2018 and until Defendant vacates the rental property, possession, court costs, and post judgment interest.

Facts

Plaintiff seeks past due rent, late fees, and per diem totaling \$11,028.72, possession, court costs, and post judgment interest. Plaintiff's first and only witness was Mrs. Gloria Shilling, who owns the three-bedroom residential rental property located at 5 Speer Road, Wilmington, DE. Plaintiff asserts, through Ms. Shilling's testimony, that Defendant signed a one-year rental agreement for the above property. The term of the lease was December 1, 2016 to December 31, 2017, and the monthly rent is \$1,100. Plaintiff avers that Defendant paid the rent through September 2017, but made no further rent payments since then and remains in possession of the property. Plaintiff contends they were aware that Defendant may want to rent the property for an extended period and, separately, were aware of his disabilities. Plaintiff understood Defendant could not afford a \$1,400 monthly rent, but was unaware that he could not pay \$1,100 per month. Plaintiff maintains they never promised to rent the property to Defendant beyond a one-year lease. Plaintiff entered into evidence a proper Five (5) Day notice, proof of mailing, breakdown sheet, and copy of the rental agreement.

Defendant admits to owing the claimed past due rent and late fees and requests time to move his personal belongings from the rental property. Defendant testified that he went through a series of medical problems and eventually started receiving disability benefits. Defendant states that he found the house located at 5 Speer Road, Wilmington, DE available to rent for \$1,400 per month. Defendant asserts that Plaintiff lowered the rent to \$1,100 per month, he signed a one-year rental agreement, and he paid the first six month's rent plus security deposit up front. Defendant contends he was told the owner would not sell the house for five or ten years, he expected to live there for a while, but he received nothing in writing except the one-year lease. Defendant avers that he found someone to sublease the house but the arrangement never materialized. Defendant maintains he eventually had a choice to pay the rent or the utility bill and he chose to "keep the lights on". Defendant states that he found a room for rent elsewhere and moved in on June 20, 2018. Defendant states that he remains in possession of the rental property at 5 Speer Road and just wants time to retrieve his personal belongings.

Discussion

Landlord-Tenant relationships are governed by Title 25 of the Delaware Code. A landlord seeking possession of the rental unit may file under §5702. If the reason is for failure to pay rent, a landlord may file under 25 Del.C. §5702(2): *The tenant has wrongfully failed to pay the agreed rent.* A landlord may then proceed under 25 Del. C. §5502(a):


A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.


In the case at bar, there is no dispute that Defendant signed a one-year lease from December 1, 2016 to December 31, 2017, for the above residential rental property. Nor is it disputed that Defendant agreed to pay a monthly rent of \$1,100, and he has not paid any rent since October 1, 2017. The written rental agreement is clearly a one-year lease agreement, and the Court is unable to enforce any other verbal agreements.

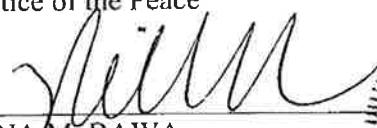
Conclusion

Based upon the foregoing, the Court finds Plaintiff has met their burden to prove by a preponderance of the evidence that Defendant signed a rental agreement for an agreed upon monthly rent for which he has failed to pay since October 1, 2017. As such, the Court enters Judgment for Plaintiff and against Defendant in the total amount of \$11,028.72, per diem rent of \$36.17, possession, court costs of \$90, and post judgment interest at 7.50%.

IT IS SO ORDERED 07th day of August, 2018


(for) SEAN P. MCCORMICK
Deputy Chief Magistrate


(for) GERALD ROSS
Justice of the Peace


NINA M. BAWA
Justice of the Peace



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).